

#19  
Board of Appeals  
met

P-3906-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: DONALD C. JOHNSON  
JEFFREY SPILFOGEL

FOR: A SEAMLESS BRASSIERE SHOULDER STRAP

SERIAL NO.: 09/780,320

FILED: February 12, 2001

EXAMINER: John Calvert, Supervisory Patent Examiner, Technology Center 3700

**REQUEST FOR RECONSIDERATION  
PURSUANT TO 37 C.F.R. 1.197**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

BOARD OF PATENT  
APPEALS &  
INTERFERENCES  
MAR -8 2004

It is respectfully requested that the Board reconsider its decision of February 19, 2004, and/or alternatively the enclosed claim pursuant to 37 C.F.R. 1.196(c).

In the application at page 1, the shortcoming of the prior art techniques concerned with obviating unsightly appearance and discomfort in edges in the manufacturing of brassiere straps is noted as below:

"In being folded in, or under itself, the raw cut edge is removed from sight and touch, but the bulk of a two ply configuration resulting from the fold remains as a possible pressing source of discomfort against the shoulder of the wearer. Moreover, a cooperating pair of inturned folds are typically operatively arranged in facing or abutting relation to each other, thus forming a seam which both from an appearance and touch or "hand", i.e. the feel of fabric constriction material of the strap, are undesirable."

Applicant's solution is to obviate the infolded edge condition and to use a fusing of plastic and to cut in the fused area since the plastic does not allow any raw edges to manifest themselves.

In the decision the Board states, at page 5,

"As correctly argued by appellants in the Reply Brief (pages 1-2), appellants may claim their product in whatever terms they choose so long as the terms are definite to one of ordinary skill in the art."

The claim limitations referred to as "intermediate process limitations" apparently qualify as "terms . . . definite to one of ordinary skill in the art."

But then the Board goes on to state:

"However, the claim on appeal as construed above is directed to a finished product while the intermediate process limitations have not been shown by appellants to change or differentiate the claimed product from the finished product of Hyams."

The observation that the unfolded edges of the product claim are not differentiated from the folded edges of Hyams is not accurate, and is a significant difference since the latter (i.e., Hyams edge condition) produces "bulk" which is a source of discomfort, and the former (i.e., applicant's edge condition) does not.


The examiner's rejection made despite not taking into account the unfolded edge condition of applicant's product as claimed in the claim on appeal fails to apply the holding in *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998) and, more particularly, that on the issue of anticipation all limitations of a claim must be considered, i.e., the reference to the proposition "the name of the game is the claim," which appears on the cited page of *Hiniker*.

In the alternative, applicant argues that the Board's decision includes an explicit statement, at page 5, that applicant may be allowed to rephrase the content of the product claim as a process claim, and does so in the enclosed REVISED AMENDMENT PRACTICE.

Favorable reconsideration of the Board's decision is respectfully requested.

Respectfully,

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Dated: February 26, 2004

## REVISED AMENDMENT PRACTICE

Claim 2. (new) A method of manufacturing a seamless shoulder strap of a brassiere having edges of nominal bulk and devoid of unsightly raw edges, said method comprising the steps of:

- A. cutting from a fabric construction material substrate a pair of elongated strips of selected width and destined to be upper and lower plies of a brassiere strap and in the cutting of which raw edges extend outwardly therefrom;
- B. putting up said upper and lower plies in a cooperating supply spool;
- C. paying out each supply spool effective to position said strips in superposed relation to each other and bounding therebetween a compartment along opposite sides of a brassiere strap;
- D. inserting in an interposed position between a cooperating pair of said upper and lower plies and in the compartment therebetween a strip of thermoplastic fibrous material having a width of an extent slightly oversized with respect to said selected width of said upper and lower plies;
- E. fusing said superposed upper ply, intermediate thermoplastic strip, and lower ply along parallel lines adjacent opposite edges of said brassiere strap causing fused areas tracking said parallel lines; and
- F. cutting in said fused areas to remove selvage edges of said brassiere strap;

whereby said brassiere strap edges are devoid of bulk produced by folding and manifested raw edges produced by raveling.